

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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H.DAYA INTERNATIONAL CO., LTD.,

Docket No.: 1-16-cv-09880 (ER)

Plaintiff,

-against-

HABIB ARAZI and PRINCESS, INC.,

Defendants.

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STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

Habib Arazi, being duly sworn, deposes and states as follows, upon information and belief:

1. I am a defendant in this action, along with Princess, Inc. ("Princess") (collectively, we are referred to as the "Defendants").
2. I file this affidavit in opposition to the instant order to show cause by plaintiff H.Day International Co., Ltd. (the "Plaintiff") seeking entry of a default judgment and damages in the amount of \$684,154.20 against Defendants (the "OSC").
3. Plaintiff commenced this action via the filing of a Complaint on December 22, 2016 (the "Complaint") (Dkt. #1).
4. By the Complaint, Plaintiff seeks damages for monies purportedly due and owing for custom-made apparel that Plaintiff caused to be manufactured and shipped from China to Defendants. (Dkt. #1).
5. Plaintiff brings claims sounding in Trade Contract Price under UCC §2-709(1)(a), breach of contract, account stated and unjust enrichment. (Dkt. #1).

6. Plaintiff alleges that Defendants were served via service upon me at 1407 Broadway, Suite #3407, New York, New York 10018 on January 10, 2017 at 3:50 p.m. (Dkt. #5).

7. In the affidavits of service, I am described as caucasian, 5'4" tall, weighing between 160-170 pounds, with brown hair, hazel eyes and between 40-45 years of age. (Dkt. #5). This does not match my description at all. Indeed, I am 46 years old, with black/balding hair, green eyes, 5' 2" tall and weighs 172 pounds.

8. As such, I could not have been confused with the person described in the affidavit of service.

9. Also curious is that it took the process server three attempts to serve me and that I was allegedly in the location of a business that has been defunct since 2015, as evidenced by the Department of State records annexed hereto as **Exhibit A**.

10. Finally, I am informed that there can be no personal liability on behalf of me as any contracts alleged by Plaintiff were in the name of Princess and not me individually.

11. In the instant case, I did not receive the pleadings until April 19, 2017 when I got the Order to Show Cause and then only by mail and, as such, a default judgment is not warranted.

12. Further, as detailed below, Defendants have multiple defenses to this action that should be decided on the merits as opposed to on default.

13. In the instant case, the orders placed by Princess that are at issue herein were placed at the behest of a third party known as "National Stores."

14. After receipt of the goods by Defendants, National Stores cancelled the order and refused to provide payment to Defendants.

15. As such, it was this unforeseen intervening event that caused any alleged nonpayment, and not any fault of Defendants.

16. Accordingly, the claim for breach of contract must be denied.

17. In the instant case, I verbally informed Plaintiff that we would not pay the stated amount because of the cancellation by National Stores.

18. The purported "Personal Guaranty" referred to by Plaintiff is simply not one at all.

19. Indeed, the language reads "I hereby agree that I will pay for above mentioned bills as on above mentioned dates."

20. I never intended to be bound personally to any contracts.

21. As such, there is simply no personal guaranty that would subject me to personal liability.

WHEREFORE, it is respectfully requested that the Court enter an order denying the OSC in its entirety and granting Defendants such other and further relief as is deemed just and proper.

Dated: May 3, 2017



Habib Arazi

Sworn to before me this
4th day of May, 2017



Notary Public

MORRIS FATEHA
NOTARY PUBLIC
STATE OF NEW YORK
QUALIFIED IN KINGS COUNTY
REGISTRATION NUMBER 02FA6196442
COMMISSION EXPIRES: 11/17/2020